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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services	)	WT Docket No. 98-182 RM-9222
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	PR Docket No. 92-235
and	)	
Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: June 28, 2000 **Released:** July 12, 2000

Comment Date: [60 days after Federal Register Publication]
Reply Comment Date: [90 days after Federal Register Publication]

By the Commission:

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. In this *Report and Order*, we adopt changes to Part 90 of the Commission's Rules that were either proposed in or suggested in response to the *Notice of Proposed Rule Making* (*Notice*) in this proceeding. The *Notice*, adopted on September 30, 1998, proposed rule changes that were intended to further consolidate and streamline the Part 90 rules. In this *Report and Order*, we adopt the proposals outlined in the *Notice* and address requests for additional rule changes.

2. The significant decisions made in this *Report and Order* are as follows: (1) eliminate the distinction between cargo handling and other uses of certain frequencies in the 450-470 MHz band; (2) change the duration of the license term for stations authorized under Part 90 from five years to ten years from the date of initial issuance or renewal; (3) change the time in which a station must be placed in operation from eight months to twelve months; (4) require applicants for any of the fifteen 220 MHz public safety channels set forth in Sections 90.719(c) and 90.720 of the Commission's Rules to submit their applications to a public safety frequency coordinator for frequency coordination prior to submission of the applications to the Commission; (5) provide that a radio facility authorized to a public safety licensee may be shared with a Federal government entity on a cost-shared, non-profit basis; (6) clarify definitions for centralized and decentralized trunking and establishment of a new process for licensing trunked systems; and (7) reassign five low power VHF frequencies identified in the *Notice* from the Part 90 Private Land Mobile Radio (PLMR) Services to the Part 95 Citizens Band Radio Service, and eliminate the licensing requirement for these frequencies.

II. BACKGROUND

3. Traditionally, the PLMR services have provided for the private, internal communications needs of public safety entities, state and local government entities, large and small businesses,

transportation providers, the medical community, and other diverse users of two-way radio systems. The Commission initiated this proceeding in conjunction with its 1998 biennial review of regulations pursuant to Section 11 of the Communications Act of 1934, as amended (the Communications Act).[1] On September 30, 1998, the Commission adopted a *Notice* proposing a comprehensive review of the rules applicable to the PLMR services to determine which regulations were not in the public interest, obsolete, overly complex, required editorial change, or redundant in nature.[2] The *Notice* proposed rule changes regarding the use of thirty frequencies in the Industrial/Business Pool that would (1) clarify provisions for obtaining special temporary authority to operate a Part 90 radio station, (2) extend the length of license term for all Part 90 licensees from five to ten years, (3) allow further shared use of Part 90 stations with the Federal government, (4) require frequency coordination in the 220-222 MHz band, and (5) make minor miscellaneous editorial changes to the Part 90 rules. Additionally, the *Notice* addressed a Petition for Rulemaking filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO) urging the Commission to extend implementation periods for public safety licensees[3] and an *ex parte* filing by the Land Mobile Communications Council (LMCC) in the Commission's "Refarming Proceeding," PR Docket No. 92-235,[4] regarding trunking on frequencies in the bands between 150 and 512 MHz.

III. REPORT AND ORDER

A. *Notice* Proposals

4. **§ 90.35 Industrial/Business Pool.** In 1973, eight frequencies in the 450-470 MHz band[5] were designated for shared use for shore-to-vessel communications related to cargo handling by stations in the Business Radio Service (now the Industrial/Business Pool)[6] and in the Maritime Services.[7] As a

[1] Section 11 requires us to review all our regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such a regulation should be deleted or modified. *See* Section 11 of the Communications Act of 1934, as amended, 47 U.S.C. § 161.

[2] 1998 Biennial Regulatory Review -- 47 C.F.R. Part 90 - Private Land Mobile Radio Services, *Notice of Proposed Rulemaking*, WT Docket No. 98-182, 13 FCC Rcd 21,133 (1998) (*Notice*). Fifteen comments were received in response to the *Notice*. A list of commenters is included in Appendix A.

[3] Amendment of Part 90 of the Commission's Rules Relating to Implementation of Public Safety Radio Systems, RM-9222, Petition for Rulemaking, *Public Notice*, Report No. 2251 (January 28, 1998) (APCO Petition).

[4] *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Report and Order*, 10 FCC Rcd 10,076 (1995); *Memorandum Opinion and Order*, 11 FCC Rcd 17,676 (1996); *Second Report and Order*, 12 FCC Rcd 14,307 (1997); *Second Memorandum Opinion and Order*, 14 FCC Rcd 8642 (1999); *Third Memorandum Opinion and Order*, 14 FCC Rcd 10,922 (1999) (*Refarming Proceeding*).

[5] The eight frequencies are listed in 47 C.F.R. § 80.373(g).

[6] *See* former 47 C.F.R. Part 91, currently codified at 47 C.F.R. Part 90. The *Refarming Proceeding* integrated the Business Radio Service into the Industrial/Business Pool for frequencies below 512 MHz.

[7] *See* Amendment of Parts 2, 81, 83, and 91-To Provide Frequencies, Standards, and Procedures for On-Board Communications in the Industrial and Maritime Mobile Services, Docket No 19665, *First Report and Order*, 42 FCC 2d 746 (1973).

result of channel splitting in the *Refarming Proceeding*, the number of shore-to-vessel/dockside frequencies available to Industrial/Business Pool licensees increased from eight to thirty.[8] These thirty frequencies currently are subject to several limitations under Section 90.35(c) of the Commission's Rules.[9] For example, the frequencies must be used for "communications concerned with cargo handling from a dock, or a cargo handling facility, to a vessel alongside."[10] When the frequencies were established in 1973, however, this restriction did not exist; the frequencies could be used by Industrial/Business Pool users for general, low power use, in addition to shared use with the Maritime Services for cargo handling.[11]

5. In the *Notice*, we stated that there was confusion regarding the limitations applicable to the use of these frequencies and that there were many requests to use the frequencies in locations other than dock and cargo handling areas.[12] Accordingly, we proposed to amend Section 90.35(c)(60) to indicate that, in addition to using the thirty frequencies at any location for low power, non-voice operation, licensees could also use the frequencies for voice operation when the frequencies were used specifically for cargo handling purposes. We solicited comment on our proposal to eliminate the distinction between cargo handling and other uses and to generally allow any low power use.

6. The majority of the commenters support expanding the use of these frequencies.[13] As Motorola points out, there is a demand for these frequencies beyond the limited purposes identified in Section 90.35(c)(60)(i).[14] Moreover, we agree with Day, Catalano & Plache (Day Catalano) that the need for these frequencies to be available at dockside for cargo handling does not preclude their availability for other purposes away from dockside locations, and that to prohibit such use would create a regulatory regime whereby spectrum would be underutilized.[15] We also concur with Day Catalano that making these frequencies generally available comports with the elimination of separate frequencies for distinct radio services and the creation of a consolidated Industrial/Business Pool below 512 MHz.[16] Finally, based on our review of the record in this proceeding, we believe that the frequencies originally could be used by Industrial/Business Pool users anywhere (not just at dockside) for non-voice digital remote control, data, and telemetry operations and for voice communications. Thus, we will eliminate the

[8] *See* note 4, *supra*. These frequencies are listed in Section 90.35(c)(60) of the Commission's Rules, 47 C.F.R. § 90.35(c)(60). The original eight frequencies are still designated for on-board communications use by stations in the Maritime Services. *See* 47 C.F.R. § 80.373(g).

[9] *See* 47 C.F.R. §§ 90.35(c)(11), (c)(30), (c)(33), (c)(35), (c)(47), and (c)(60).

[10] *See* 47 C.F.R. § 90.35(c)(60)(i).

[11] *See* note 10, *supra*.

[12] *Notice*, 13 FCC Rcd at 21,135-36.

[13] *See, e.g.*, Day Catalano Comments at 3; Motorola Comments at 4; Blooston Mordkofsky Comments at 2; UTC Comments at 4; PCIA Comments at 3.

[14] Motorola Comments at 4.

[15] Day Catalano Comments at 3.

[16] Day Catalano Comments at 3.

current distinction between cargo handling and other uses of these frequencies in the 450-470 MHz band and permit their use for low power voice and non-voice operations.

7. We nonetheless want to ensure that our actions do not result in any unintended adverse public safety consequences. In this connection, we note that while LMCC and Personal Communications Industry Association, Inc. (PCIA) do not oppose permitting low power licensing for non-cargo operations, they request that non-cargo operations be put on a secondary basis to cargo operations.[17] They also state that the Commission should not permit licensing of the frequencies without specification of location[18] because there remain users for cargo operations on these channels for which the frequencies have an important use, including safety at the dockside, and it is vital that there be a means to determine the source of any interference.[19] Motorola, on the other hand, disagrees and states that numerous technical limitations which apply to the listed frequencies would protect against any risk of increased interference associated with greater flexibility in the permissible operation.[20]

8. We conclude that adoption of the suggestions made by LMCC and PCIA is warranted and would further the public interest. In this connection, we believe that making non-cargo operations secondary to cargo operations is a minimal limitation that would not significantly detract from our efforts to expand the use of these frequencies. In addition, we note that while the frequencies are licensed as mobile units, requiring licensees to specify their locations (and restricting the use of the frequencies to a certain radius around that location) also is a minimal limitation and has been imposed on other frequencies in the Industrial/Business Pool. In sum, our approach would adequately address the interference concerns raised by LMCC and PCIA regarding vital dockside communications. Accordingly, we amend Section 90.35(c)(60)(i) to allow use of these frequencies for low power voice and non-voice communications, both for cargo and non-cargo operations, but make those communications related to non-cargo operations secondary to those concerning cargo operations. We also will require licensees engaging in communications regarding non-cargo operations to specify permanent sites of operation to promote effective and efficient frequency coordination and to minimize the likelihood of harmful interference to communications related to cargo operations.

9. **§ 90.149 License term.** Part 90 authorizations generally are granted for a period not to exceed five years; however, certain Part 90 authorizations for commercial mobile radio service (CMRS) providers on the 220-222 MHz, 929-930 MHz paging, 800/900 MHz Industrial/Land Transportation and Business Radio Services, and 800/900 MHz Specialized Mobile Radio Service Pool are for ten years.[21] In the *Notice*, we proposed to amend Section 90.149(a) of the Commission's Rules to provide that licenses for all stations authorized under Part 90 will be issued for a term not to exceed ten years from the date of initial issuance or renewal. We argued that providing a ten-year period would provide economic benefits for licensees: under the Commission's current fee schedule, the application fee for a ten-year license is same as that for a five-year license.[22] By having to renew licenses only every ten

[17] LMCC Comments at 4; PCIA Comments at 3.

[18] LMCC Comments at 4.

[19] LMCC Comments at 4.

[20] Motorola Comments at 4.

[21] *See* 47 C.F.R. § 90.149(a).

[22] *See* 47 C.F.R. 1.1102.

years, licensees would effectively have their application fees and their costs of processing the renewals halved. We also stated that standardizing the license term for all Part 90 licensees would reduce our costs of processing renewal applications.[23]

10. We adopt our proposal to extend the licensing term to ten years for all Part 90 licenses. A majority of the commenters agree that extending the licensing term provides significant benefits by reducing both costs and administrative burdens for licensees and significantly reducing the administrative burden on the Commission.[24] APCO and American Petroleum Institute (API), however, suggest retention of the current license term on the basis that it is a cost-effective method of maintaining an accurate license database. These commenters contend that a shorter license term requires users to modify their licenses and provide necessary updates more often[25] and effectively clears valuable, unused spectrum by necessitating a rolling review of the license database.[26] In addition, while API agrees with PCIA that increased enforcement would have a positive impact on maintenance of an accurate database, it doubts that we have the resources to devote to such an increased enforcement effort.[27] While we recognize APCO's and API's concerns regarding the accuracy of the license database, we believe they are outweighed by the benefits obtained by reducing cost and administrative burdens for licensees and the Commission, including, but not limited to, the standardization of the license term for all Part 90 licensees. Furthermore, we are confident that our recent adoption of the Universal Licensing System (ULS) rules and implementation of a comprehensive electronic filing system for wireless applications will make it easier for users to provide necessary updates and thus encourage users to notify us of any changes (as currently required). We remind licensees of their obligations under Section 90.135 of the Commission's Rules[28] and we will take appropriate action against licensees that do not comply with that rule. We therefore adopt our proposal to amend Section 90.149(a) to provide that licenses for stations authorized under Part 90 will be issued for a term not to exceed ten years from the date of initial issuance or renewal. Accordingly, upon grant of a current licensee's renewal application, the current licensee will receive a license for ten years.

11. **§ 90.155 Time in which station must be placed in operation.** Sections 90.155(a) and (b) of the Commission's Rules generally require that stations authorized under Part 90 be placed in operation within eight months of the date of grant. Licensees of certain stations, however, have twelve months to implement their stations.[29] We also note that the Part 90 Rules include provisions for requesting

[23] *Notice*, 13 FCC Rcd at 21,137.

[24] *See* Motorola Comments at 5; Day Catalano Comments at 4; Blooston Mordkofsky Comments at 2; and UTC Comments at 3. *See also* PCIA Comments at 4-5.

[25] APCO Comments at 2.

[26] API Comments at 4.

[27] API Reply Comments at 4.

[28] 47 C.F.R. § 90.135.

[29] For example, Location and Monitoring Service stations (47 C.F.R. § 90.353), 800 MHz trunked radio systems (47 C.F.R. § 90.631), and 220-222 MHz stations (47 C.F.R. § 90.757) are permitted a twelve-month implementation period.

extended implementation for up to five years for certain types of licenses.[30] In the *Notice*, we proposed to amend Sections 90.155(a) and (b) to provide that generally, except for stations seeking an extended implementation period, all Part 90 stations be constructed and placed in operation within twelve months.[31] We stated that there was merit in having a uniform period, and that having a longer implementation period would simplify the regulatory requirements for PLMR stations by reducing the number of requests for extensions of time to construct a station. We asked for comments on this proposal, including comments on whether some other length of time would be more appropriate.

12. Eight comments were filed supporting the proposal, and no opposing comments were filed.[32] We agree with the commenters that it would be in the public interest to increase the time in which a station must be placed in operation. In this connection, we reiterate our belief that extending the time in which stations must be placed in operation to twelve months will reduce the filing of extension requests, simplify the regulatory requirements applicable to PLMR licensees and decrease administrative burdens placed on licensees and the Commission.[33] We also agree with LMCC's statement that this rule modification will eliminate confusion that has occasionally occurred when applicants were unsure as to their required construction date because of the different implementation periods for various part 90 licenses.[34] We, therefore, adopt our proposal to amend Sections 90.155(a) and (b) to increase the time in which a station must be placed in operation from eight months to twelve months.

13. **§ 90.175 Frequency coordination requirements.** In the *Notice*, we noted that because traditional public safety frequencies are exempt from auction, and the Commission no longer has authority to conduct lotteries,[35] we currently lack a procedure for handling mutually exclusive applications for the 220 MHz public safety channels.[36] We also noted that when the Wireless Telecommunications Bureau released a Pubic Notice announcing that it would resume accepting applications for the 220 MHz public safety channels, it stated that, while it believed that the probability of receiving mutually exclusive[37] 220 MHz public safety applications would be low, it would hold any such applications in abeyance pending a decision in this proceeding as to how we would resolve such mutual exclusivity.[38] To resolve potential mutual exclusivity problems, we proposed amending Section

[30] *See* 47 C.F.R. §§ 90.629, 90.665 and 90.685.

[31] *Notice*, 13 FCC Rcd at 21,138.

[32] *See* Day Catalano Comments at 4; AMTA Comments at 2; Motorola Comments 6; API Comments 5; UTC Comments at 3; Blooston Mordkofsky Comments at 3; APCO Comments at 3; LMCC Comments at 4.

[33] Motorola Comments at 6; API Comments at 4.

[34] LMCC Comments at 4.

[35] *See* Balanced Budget Act of 1997, Pub. L. No 105-33, 47 U.S.C. § 309(i)(5)(A).

[36] *Notice*, 13 FCC Rcd at 21139. Pursuant to 47 C.F.R. § 90.175(i)(14), frequency coordination is not required for frequencies in the 220-222 MHz band. 220 MHz licensees on shared channels are expected to coordinate base station operations amongst themselves to minimize interference and ensure operational compatibility.

[37] Applications filed on the same day for the same frequencies for use in the same geographic area are considered to be mutually exclusive.

[38] *Notice*, 13 FCC Rcd at 21,139 (citing Filing Freeze to be Lifted for Applications Under Part 90 for the Fifteen Public Safety Channel Pairs in the 220-222 MHz Band, *Public Notice*, 13 FCC Rcd 2758, 2759 (WTB 1998)).

90.175(i)(14) of the Commission's Rules to require that applicants for any of the fifteen 220 MHz public safety channels set forth in Sections 90.719(c) and 90.720 of the Commission's Rules submit their applications to a certified public safety frequency coordinator for frequency coordination prior to submission of the applications to the Commission.[39]

14. We adopt our proposal to require frequency coordination for applications seeking licenses for the 220 MHz public safety channels. Only two comments were received regarding this proposal.[40] APCO agrees that frequency coordination of public safety channels in the 220 MHz band is necessary, and is prepared to assume the coordination responsibility.[41] INTEK Global Corporation (Intek) also agrees that frequency coordination makes sense for the five shared public safety channels, but not the ten exclusive use channels.

15. As a general matter, shared frequencies that are licensed under Part 90 are subject to a frequency coordination requirement. The 220 MHz public safety channels have been an exception. Without coordination, users eligible to use shared channels might not choose the most appropriate frequency, which could needlessly lead to interference and avoidable frequency congestion problems.[42] Frequency coordinators recommend the best available frequency on shared spectrum in a particular geographic area on a case-by-case basis for each applicant. The benefits of frequency coordination and the Commission's reliance on frequency coordinators are recognized in the Communications Act and the Commission's past experience regarding PLMR licensing.[43] No commenter opposed our proposal with respect to required frequency coordination for shared 220 MHz public safety channels. Accordingly, we will require frequency coordination for the five shared public safety channels.

16. We will also require frequency coordination for the ten exclusive use channels. While APCO agrees with our proposal,[44] Intek states that it does not necessarily see the value in using a frequency coordinator to process applications for the exclusive use channels.[45] Intek expresses concern about delays in licensing, notes that the majority of applications will not be mutually exclusive, and states that the Commission, at a minimum, must continue to process applications for the public safety channels on a first-come first-served basis.[46] We note, as an initial matter, that applications for the

[39] Frequency coordination is the process by which a private organization (a frequency coordinator) recommends to the Commission the most appropriate frequencies for these applicants. *See* Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, 103 FCC 2d 1093, 1094-95 (1986). It involves balancing a variety of factors that depend on the applicant's specific needs, the complex environmental conditions in which the station will be operating, and the other users already on the available frequencies. *Id.*

[40] *See* APCO Comments at 3; Intek Comments at 2.

[41] APCO Comments at 3.

[42] Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, 103 FCC 2d at 1098.

[43] *Id., citing* 47 U.S.C. § 332, as amended by The Communications Amendments Act of 1982, Pub. L. No. 97-259, 96 Stat. 1087 (1982).

[44] *See* APCO Comments at 3.

[45] Intek Comments at 3

[46] *Id.*

public safety channels will be considered mutually exclusive only if they are filed on the same day for the same channels and in the same geographic area. We further note that this definition does not affect our processing of these applications on a first-come, first-served basis. Rather, it provides a pre-application filing mechanism to avoid mutual exclusivity in this context. We also note that Intek has not suggested another method for resolving potential mutual exclusivity. Further, we believe that any delays resulting from requiring frequency coordination will be minimal. Moreover, because we must have a procedure for resolving mutually exclusive applications, we conclude that the most expeditious, efficient, and effective means to do so would be to require frequency coordination for the ten exclusive use public safety channels.

17. There are currently pending a small number of mutually exclusive applications for the 220 MHz public safety channels. In the 1998 *Public Notice* resuming the acceptance of applications for the 220 MHz public safety channels, the Wireless Telecommunications Bureau stated that in the event it received mutually exclusive applications, it would hold the applications in abeyance pending our decision on how to resolve the mutual exclusivity.[47] We have now made that decision by adopting rules requiring frequency coordination for these channels. We therefore dismiss without prejudice the pending mutually exclusive applications so that they may be refiled with frequency coordination under our new rules. We find that this is the best and fairest approach for resolving these applications.[48] It may allow all of the pending applications to be granted and we believe that the minimal benefits to the public that might result from comparative hearings, the only alternative method for resolving mutual exclusivity, are far outweighed by the costs and delays connected with the hearing process. We also note that the *Public Notice* provided applicants with notice that their applications, if mutually exclusive, would likely be processed under the new rules we adopted.[49]

18. **§ 90.179 Shared use of radio stations.** Section 90.179 of the Commission's Rules permits Part 90 licensees to share the use of their facilities on a nonprofit, cost shared basis.[50] A facility (station) is considered shared when a non-licensed user of a station utilizes the station for its own communications under an arrangement with the station licensee. However, Section 90.179(a) limits licensees' authority to share their stations as follows: public safety radio service licensees can only share their stations with other state or local public safety entities, and Industrial/Business service licensees can only share their stations with other Industrial/Business eligibles. The *Notice* requested comments on several proposals to extend sharing privileges.

19. *Public safety licensees sharing with Federal entities.* Federal public safety entities are not eligible for Part 90 authorizations, and thus Part 90 licensees are precluded from entering into sharing arrangements with Federal government entities pursuant to Section 90.179(a). In this connection, we observed in the *Notice* that many local government, police and fire entities, are licensees of multi-

[47] Filing Freeze to be Lifted for Applications Under Part 90 for the Fifteen Public Safety Channel Pairs in the 220-222 MHz Band, *Public Notice*, 13 FCC Rcd 2758, 2759 (WTB 1998).

[48] *Cf.* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Dkt. No. 95-183, *report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18,600, 18,642 (1997); Amendment of Parts 2 and 22 of the Commission's Rules to Allocate Spectrum in the 929-941 MHz Band and to Establish Other Rules, Policies and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service, Gen. Dkt. No. 80-183, *Third Report and Order*, 97 FCC 2d 900, 910-11 (1984).

[49] *See Public Notice, supra* note 47.

[50] *See* 47 C.F.R. § 90.179.

channel radio systems while at the same time, there may be Federal government agencies that require communications in the same geographical area, but, because of circumstances unique to Federal agencies, lack access or the capability to obtain such communications.[51] We also noted that the Commission has received inquiries over the years from public safety licensees interested in sharing their stations with Federal agencies and asked whether extending this sharing privilege by rule would eliminate an obsolete or unnecessary restriction.[52] The commenters unanimously confirmed our observations in this regard and agreed with our proposal to amend Section 90.179 to allow public safety radio service licensees to enter sharing agreements with their Federal counterparts on a non-profit, cost-shared basis. We continue to believe that eliminating this restriction serves the public interest by fostering the realization of interoperability amongst state and local public safety entities and Federal government agencies. We further note that such sharing may benefit Part 90 licensees because they could be compensated for a portion of the total system costs under the sharing arrangement. Moreover, established National Telecommunications and Information Administration (NTIA) policies provide that the Federal government typically should not use Federal government frequencies to provide communications for federal agencies unless commercial services are either unavailable, are not suitable, or are significantly more expensive.[53] Considering the factors discussed above, we now amend Section 90.179 of the Commission's Rules to provide that a radio facility authorized to a public safety licensee may be shared with a Federal government entity on a cost-shared, non-profit basis.

20. *Public safety licensees sharing with Industrial/Business entities.* We also asked for comments on whether to extend the sharing arrangement for public safety licensees to include sharing with other Part 90 eligibles, such as those in the Industrial/Business Pool. Day Catalano and UTC support the proposal,[54] while API opposes it.[55] Day Catalano argues that public safety licensees can benefit by being permitted to share the cost of their systems with other users, and that the public safety licensees are the best determiners of whether their systems can be shared with non-public safety users without jeopardizing critical safety and emergency communications.[56] API contends, however, that extending sharing beyond Federal Government entities should not be encouraged on the ground that further extending sharing opportunities would likely intensify exhaustion of the already congested PLMR spectrum.[57] We decline to permit, by rule, public safety licensees to share public safety spectrum with other Part 90 eligibles. We are concerned that allowing sharing of public safety spectrum by other non-public safety Part 90 eligibles could compromise or undermine our efforts to ensure that public safety communications requirements are met. Ensuring that adequate spectrum is available to meet the present

[51] *Notice*, 13 FCC Rcd at 21,140.

[52] *Id.*

[53] *See* National Telecommunications and Information Administration, U.S. Department of Commerce, NTIA TELECOM 2000, p.376 (1988).

[54] Day Catalano Comments at 5; UTC Comments at 4-6.

[55] API Comments at 5.

[56] Day Catalano Comments at 5.

[57] API Comments at 5.

and future need of the public safety community is one of the Commission's highest priorities.[58] Consequently, any proposal whereby a non-public safety eligible would use public safety spectrum must be subject to close scrutiny to ensure that the arrangement does not result in a net loss of public safety spectrum; this can best assured by permitting such sharing only pursuant to individual rule waivers.[59]

21. *Industrial/Business licensees sharing with public safety.* We also asked whether Industrial/Business Pool licensees should be permitted, by rule, to share their stations with public safety and Federal government entities. We noted in this connection that the Wireless Telecommunications Bureau (Bureau) has granted waivers of Section 90.179 of the Rules to permit the sharing of a 900 MHz Industrial/Land Transportation system with public safety and Federal government users and asked whether permitting such sharing by rule would eliminate an unnecessary restriction. Most commenters support this proposal. API expressed concern that a general sharing by Industrial/Business Pool licensees and public safety and Federal agencies would intensify already-congested PLMR spectrum.[60] However, we believe that extending the sharing proposal to all Part 90 eligibles would allow for additional cost-savings, and would also provide high-quality land mobile communications over a large geographical territory and provide benefits to public safety and Federal entities that might not otherwise have access to contemporary wireless communications. In addition, as previously stated, the Bureau has granted waivers of the eligibility restriction contained in Section 90.179 based on the grounds that the action would serve the public interest by encouraging more efficient use of the spectrum, and by providing improved opportunity for communication by the public safety community and the federal government. Unlike the proposal to allow public safety licensees to share with Industrial/Business entities, we believe that this proposal would result in a net increase in the availability of spectrum to public safety entities. There has been no evidence to the contrary presented in this proceeding. Accordingly, we will allow Industrial/Business licensees sharing with public safety and Federal Government entities. We will amend Section 90.179 accordingly.

22. **§ 90.187 Trunking in the bands between 150 and 512 MHz.** In 1997 the Commission amended the rules in the *Refarming Proceeding* by adding a new rule section, Section 90.187, to allow centralized trunking[61] in the PLMR bands between 150 MHz and 512 MHz.[62] The new rules allowed PLMR licensees to make more efficient use of the spectrum. Several petitions for reconsideration were filed concerning the trunking rules adopted.[63] Later, the Commission started to receive informal

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[58] *See, e.g.*, The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Dkt. No. 96-86, *First Report and Order and Third Notice of Proposed Rule Making*, 14 FCC Rcd 152 (1998).

[59] *See, e.g., State of South Carolina*, 13 FCC Rcd 8787, 8793 (1997).

[60] API Comments at 5.

[61] In a centralized trunked system, the base station controller provides dynamic channel assignments by automatically searching all channels in the system for and assigning to a user an open channel within that system.

[62] *Refarming Proceeding, Second Report and Order*, 12 FCC Rcd at 14,337-38.

[63] On June 10, 1999, in response to the petitions for reconsideration, the Commission adopted a *Third Memorandum Opinion and Order* (*Third MO&O*) in the *Refarming Proceeding*, modifying Section 90.187 of the Rules. *Refarming Proceeding, Third Memorandum Opinion and Order* 14 FCC Rcd 10,922. In the *Third MO&O*, the Commission adopted new rules regarding when licensees are permitted to employ trunking. The Commission did not, however, change what type of trunked systems are covered by Section 90.187 -- *i.e.*, centralized trunked (continued....)

inquiries concerning the applicability of Section 90.187 for decentralized trunked systems.[64] On March 17, 1998, LMCC filed a letter with the Commission that concerned both centralized and decentralized trunking issues.[65] To address LMCC's concerns, we raised the issue of trunking in the *Notice*.[66] We sought comment on LMCC's proposal that decentralized trunked systems be designated as such on the licensees' authorizations, and that two separate authorizations be used for "hybrid" trunked systems.[67] We also asked for further information and comment on the intended use of what LMCC refers to as a "protected" channel in the trunking context, *e.g.* whether it is designed to function only as a voice channel or whether it is intended as a control channel and, if so, what control functions are contemplated.[68]

23. A number of parties commented on the definitions of centralized and decentralized trunking we set forth in the *Notice*.[69] American Mobile Telecommunications Association, Inc. (AMTA) urges the Commission to adopt technology-neutral definitions of centralized and decentralized trunking.[70] AMTA also proposes that centralized trunking immediately be explicitly permitted where exclusivity is recognized by the Commission or when all co-channel licensees within 50 miles concur.[71] Motorola recommends that the Commission change its definition of centralized trunking, with more emphasis placed on the fact that the user is assigned an open channel potentially regardless of any co-channel use outside the system on that channel.[72] Motorola also states that the definition of a decentralized trunked system in the *Notice* fails to take into account other decentralized trunked systems that operate via a controller installed into a base station repeater.[73] LMCC comments that the Commission's definitions of centralized and decentralized trunking in the *Notice* do not appear to address trunking systems where

(Continued from previous page) ———————————
systems. It is clear from the comments filed in this proceeding that additional changes to the trunking rules are needed.

[64] In a decentralized trunked system, which is also a system of dynamic channel assignment, the system continually monitors the assigned channels for activity both within the trunked system and outside the trunked system, and transmits only when an open channel is found.

[65] Letter from Larry A. Miller, President, LMCC to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, dated March 17, 1998. This letter is an ex parte filing in the *Refarming Proceeding*.

[66] *Notice*, 13 FCC Rcd at 21,141-43.

[67] *Id.* at 21,142. A hybrid trunked system is one where at least one of the frequencies being trunked but not all the frequencies being trunked meet the criteria specified in 47 C.F.R. § 90.187(b).

[68] *Id.* at 21,142-43.

[69] Comments were filed by AMTA, Motorola, API, UTC, APCO, LMCC and PCIA.

[70] AMTA Comments at 5.

[71] AMTA Comments at 4 & 5.

[72] Motorola Comments at 12.

[73] Motorola Comments at 12.

monitoring for co-channel emissions is not performed by the mobile unit, but rather by a computerized monitor employed at the repeater transmitter.[74]

24. With regard to LMCC's proposal, API states that it believes that the distinction in trunking modes is critical and that information should appear on the face of the station license designating whether a channel is monitored by a mobile unit or automatically at the repeater site. API suggests that this may be accomplished by creating another field on the license or by using a specific station class code (*e.g.*, FB8 or FB9).[75] UTC supports LMCC's proposal and also supports the utilization of a station class code to designate on a single license those frequencies that may be monitored by automatic means in the form of a monitor attached to a repeater transmitter.[76] UTC further states that it is vital that frequency coordinators and other users be able to determine the operational mode of the system in order to recommend appropriate frequencies and determine potential sources of interference.[77] LMCC, in a letter filed on October 14, 1998 suggested that trunked systems apply for two authorizations to be granted concurrently, an authorization for the protected channel (YG) and authorizations for the remaining channels in the trunked system (IG).[78] However, in its comments LMCC suggests that the Commission utilize a station class code in addition to designating on a single license those frequencies that are monitored and those that are not monitored. LMCC states that it is seeking to identify on a license three different frequency usage situations that would be readily apparent in a frequency-specific database search: (1) a frequency where the licensee employs a manual means of monitoring the channel prior to transmission or the mobile radio itself performs the channel selection (FB2);[79] (2) a frequency where the licensee employs a monitor at the transmitter repeater which automatically locks out a channel when there are co-channel emissions (FB2M); and (3) a frequency where the licensee does not employ any form of monitoring, as the licensee has obtained co-channel consent to non-monitoring or there is sufficient contour clearance to co-channel licensees (FB2P).[80] PCIA supports the proposal set forth in the LMCC comments.[81]

25. When the Commission adopted rules in the *Refarming Proceeding* to allow for trunking, it did not discuss the development of "hybrid" trunking systems. A hybrid trunked system is one where at least one of the frequencies being trunked but not all the frequencies being trunked meet the criteria

[74] LMCC Comments at 5.

[75] API Comments at 6.

[76] UTC Comments at 6.

[77] *Id.*

[78] Letter from Larry A. Miller, President, LMCC to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, dated March 17, 1998. This letter is an ex parte filing in the *Refarming Proceeding*.

[79] The station example being utilized here assumes a private, internal use system. If the station is a community repeater, the station class would be FB4M or FB4P, as the case may be, a private carrier would be FB6M or FB6P, and a non profit cooperative would be FB7M or FB7P.

[80] LMCC Comments at 8.

[81] PCIA Comments at 7.

specified in Section 90.187(b) of the Rules.[82] Nevertheless, we have learned that such systems have developed. LMCC contends that such systems allow users, especially users located in spectrum congested areas, to make more efficient use of the spectrum. Based on the record developed in this proceeding, as well as our findings and decisions in the *Refarming Proceeding*, we agree. Therefore, we are amending the rules to make it clear that such hybrid systems are permitted and we adopt rules governing their use. We are also taking this opportunity to revise the definition of trunked systems in Section 90.7 so that Section 90.187 now governs all trunking systems (centralized, decentralized and hybrid) in the PLMR bands between 150 MHz and 512 MHz. We believe that this action will eliminate any confusion between what modes of trunked operation are covered by Section 90.187. Further, the new rules make it clear that except under certain conditions, trunked systems must monitor prior to transmitting. Moreover, the level of monitoring must be sufficient to prevent trunked systems from causing interference. We will rely on the frequency coordinators to specify a "level" of monitoring. In this regard, we would expect coordinators to specify whether monitoring has to be done at the base station (repeater) and what transmissions have to be monitored (*i.e.*, the transmissions coming from another licensee's mobiles/portables or another licensee's base station). Frequency coordinators must develop and employ uniform procedures concerning the certification of applications proposing trunked systems that require monitoring.

26. The *Notice* also addressed issues concerning the licensing of trunked systems. The commenters indicate the importance of frequency coordinators being able to determine the operational mode of the system in order to recommend appropriate frequencies and minimize interference.[83] In this regard, commenters state that coordinators need to know if the system is operating in a conventional or trunked mode, and if trunked, whether it is a centralized, decentralized or hybrid system.[84] We agree that such information is very important in the frequency assignment process and, therefore, should be specified on the license. Consequently, we are adopting the following process for licensing trunked systems operating in the PLMR bands between 150 MHz and 512 MHz. A radio service code indicating trunked operation, either YG and YW, must be used to show that the system is being operated in the trunked mode.[85] To identify which, if any, frequencies in the trunked system are not subject to the monitoring requirement (*e.g.*, applicant/licensee has obtained necessary consent or, if operating in the 470-512 MHz band, has exclusive use) the class of station associated with the frequency must be followed by an FB8 code.

27. Under this new licensing procedure, entities operating any type of trunked system, including a decentralized trunking system, must be specifically licensed to do so. As noted above, we believe it is very important from a spectrum management perspective to have this type of information on the license and included in the licensing database. At the same time, however, we recognize that there may be a substantial number of current licensees who would require a license modification under the new procedures. To minimize the impact on existing licensees, we will allow existing licensees six months from the release of this *Report and Order* to modify their licenses to show only a change to a trunked

[82] 47 C.F.R. § 90.187(b).

[83] LMCC Comments at 5; UTC Comments at 6.

[84] In a hybrid system, coordinators need to know which frequencies are subject to the monitoring requirements and which are not.

[85] These codes are specified in 47 C.F.R. § 1.952. YG is for operations on frequencies in the Industrial/Business Pool and YW is for operations on frequencies in the Public Safety Pool.

radio service code without frequency coordination or paying a fee.[86] Such requests should be sent directly to Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325-7245, Attention: Trunking License Correction, Public Safety and Private Wireless Division, Licensing & Technical Analysis Branch, Mobile Radio Services Section. Alternatively, licensees can request to have the radio service code changed if they apply to modify their license in other ways or when their licenses come up for renewal.

28. In the *Notice* we proposed to modify Section 90.187 to limit to ten the number of frequency pairs that may be assigned at any one time.[87] APCO requests that this limitation not apply in the Public Safety Pool because some large cities, counties and states may have a need for more than ten channels for their trunked public safety systems.[88] Subsequent to the release of the *Notice*, in another proceeding,[89] we adopted rules permitting requests for more than ten channels where the applicant makes a showing of sufficient need.[90] Thus, APCO's request in this proceeding is moot.

29. **§ 90.421 Operation of mobile units in vehicles not under the control of the licensee.** In the *Notice*, we proposed to amend Section 90.421 to remove redundant text and include text concerning hand-held radio units. Two supporting comments were received on this issue and no opposing comments were filed.[91] API states that adopting this proposal will eliminate misunderstanding regarding mobile stations as it will be clear that mobile stations include both vehicular-mounted and hand-held transceivers. We agree with API. For the reasons stated in the *Notice* and by the commenters, we therefore adopt our proposal to amend Section 90.421 as set forth in Appendix B.

30. **§ 1.903 Authorization Required.**[92] In the *Notice*, we invited comments on whether five "color-dot" frequencies[93] should be reallocated from the Part 90 Private Land Mobile Radio Services to one of the Citizens Band Radio (CB) Services in Part 95 (such as the Low Power Radio Service).[94]

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[86] *Cf.* Amendment of the Maritime Services Rules (Part 80) to Permit VHF Marine Channel Nine to be Used as a Second Calling Channel, *Report and Order*, 7 FCC Rcd 2618, 2621 (1992) (permitting licensees to apply for alternative frequency without paying fee for modification of licenses).

[87] *Notice*, 13 FCC Rcd at 21152.

[88] APCO Comments at 3 (citing Supplemental Comments of the Land Mobile Communications Council at 8 (July 22, 1998).

[89] *See Refarming Proceeding, Third Memorandum Opinion and Order*, 14 FCC Rcd 10,922; 47 C.F.R. § 90.187(e).

[90] We limited requests for additional channels to a showing of need because of concerns of spectrum warehousing. *See id.* ¶ 18.

[91] Comments in support were filed by APCO and API.

[92] In the *Notice*, we titled this section "§ 90.113 Station Authorization Required." The provisions of former Section 90.113 are subsumed within new Section 1.903. *See* Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027, 21054 ¶ 56 (1998).

[93] These frequencies are 154.570 MHz, 154.600 MHz, 151.820 MHz, 151.880 MHz, and 151.940 MHz.

[94] *Notice*, 13 FCC Rcd at 21144.

Further, we invited comments on whether to eliminate individual licensing requirements in connection with such a reallocation of the frequencies.[95] We also invited comments on the effect that such a reallocation would have on existing Part 90 licensees of these frequencies and on whether there are other frequencies in Part 90 for which we could eliminate the licensing requirement.[96]

31. After reviewing the record, we conclude that the licensing requirement for the five low power VHF frequencies identified in the *Notice* should be eliminated and these frequencies reallocated from Part 90 to one of the CB services in Part 95. All comments support our proposal.[97] We agree with the commenters that because of the manner in which manufacturers have chosen to market radios that operate on these frequencies[98] and our elimination of the frequency coordination requirements on the low power frequencies,[99] it would be in the public interest to eliminate the licensing requirement for them. Two of the three existing CB services,[100] CB Radio and Family Radio, only allow voice communications.[101] The third, LPRS, prohibits two-way voice communications.[102] The color-dot frequencies, on the other hand, are intended for voice, data, and imaging. Therefore, we are following the suggestion of Motorola and Tandy[103] by placing these frequencies in a new radio service category in the CB services, to be called the Multi-Use Radio Service (MURS). For consistency and ease of use and administration, we will also allow 2 watt operations on all of the frequencies, including those for which operation only at 1 watt is currently permitted.

32. Motorola suggests that four UHF frequencies (467.850 MHz, 467.875 MHz, 467.900 MHz and 467.925 MHz) also be relocated to low power industrial/business service for unlicensed, low power use. Motorola states that these four frequencies have been serving low-tier business needs for several decades.[104] Tandy proposes adding yet four more frequencies (151.625 MHz, 151.955 MHz, 154.570 MHz and 154.600 MHz) which it says are already commonly included on currently available business

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[95] *Id.*

[96] *Id.*

[97] Motorola Comments at 8; Blooston Mordkofsky Comments at 3; Tandy Comments at 3; PCIA Comments at 7.

[98] The radios that operate on these frequencies are sold to the general public by mass merchandisers and mail order and internet companies. Partially as a result, there is customer confusion regarding the licensing requirements for the radios. Tandy, which operates the Radio Shack stores, states that while it provides information regarding licensing information both in its catalogs and with the documents that come with the radios it manufactures, it does not believe that most other companies do so. Tandy also states that the licensing rate, even among its own customers, is very low. Tandy Comments at 2-3.

[99] In the *Part 90 Omnibus Report and Order* we eliminated the frequency coordination requirement for these five frequencies. See Amendment of Part 90 of the Commission's Rules Concerning Private Land Mobile Radio Services, WT Docket No. 97-153, *Report and Order*, 14 FCC Rcd 3023, 3024-25 (1999).

[100] The Citizens Band Radio Services are currently comprised of the Citizens Band (CB), the Family Radio Service (FRS), and the Low Power Radio Service (LPRS). 47 C.F.R. § 95.401.

[101] 47 C.F.R. § 95.412.

[102] *Id.* at § 95.401(c).

[103] Motorola Comments at 8; Tandy Comments at 3.

[104] Motorola Comments at 10.

band radios.[105] LMCC, however, states that while it does not object to the Commission's original proposal, the Commission should emphasize that the situation is an anomaly and should not serve as a precedent for turning other PLMR spectrum into unlicensed spectrum.[106] PCIA concurs with the LMCC's position and requests that other frequencies in the Industrial/Business Pool not become a haven in which manufacturers are allowed to promote unlicensed consumer radios.[107] Similarly, API states that while the adoption of the proposed rule change is the most prudent course of action to take under the circumstances, the further erosion of critical PLMR spectrum must be avoided in the future.[108] We acknowledge the differing views presented concerning elimination of the licensing requirement for additional Part 90 frequencies. Against this backdrop, we are not persuaded that there is sufficient support in the record to justify reallocation of additional Part 90 frequencies at this time. We may, however, revisit this issue at a later date should additional support develop. We will therefore include in the new Multi-Use Radio Service only the five frequencies listed in our original proposal.

33. **§ 90.210 Emission masks.** Section 90.210 of the Commission's Rules specifies emission masks for the various frequency bands governed by our Part 90 rules.[109] The emission mask is an important technical parameter that affects the efficient use of a frequency band by limiting emissions from one channel into adjacent channels. To maximize spectrum efficiency, the full extent of the channel must be utilized as much as possible to maximize information transfer. At the same time, out-of-band emission limits must be carefully selected to provide acceptable adjacent channel protection. Motorola has suggested an alternative approach to emission masks for limiting out-of-band emissions called Adjacent Channel Coupled Power (ACCP).[110] Motorola contends that ACCP is a more flexible approach with minimum technical requirements.[111] Under Motorola's suggested ACCP approach, the amount of energy directly inserted into the adjacent channel spectrum is calculated. Motorola states that direct measurements of interfering energy are more meaningful than relying on emission masks and eliminate the bias that traditional emission masks have in favor of analog transmissions versus digital modulation techniques.[112] Ericsson also strongly supports the ACCP concept.[113] In the *Notice*, we

[105] Tandy Comments at 3.

[106] LMCC Comments at 8-9.

[107] PCIA Comments at 7.

[108] API Comments at 7.

[109] 47 C.F.R. § 90.210.

[110] This approach was suggested by Motorola in its comments to the *Second Notice of Proposed Rule Making,* WT Docket No. 96-86. Motorola Comments at 16, and Appendix to Comments at 8. Motorola stated that ACCP is an industry-developed method to provide compatibility within the complex environment resulting from the *Refarming Proceeding,* and that this new approach should better accommodate future technologies as well as eliminate the interpretation problems associated with emission masks that depend on specific spectrum analyzer characteristics.

[111] *See* Comments of Motorola to the *Second Notice of Proposed Rule Making,* WT Docket No. 96-86 at 16, and Appendix to Comments at 8.

[112] Motorola Comments at 13.

[113] Ericsson Comments at 11-14.

requested comments on both the approach and the technical parameters concerning implementation of the ACCP concept.

34. In its Reply Comments, Motorola suggests that the Commission defer adoption of specific ACCP protection requirements until the industry has an opportunity to develop recommendations on the necessary protection required by all types of receivers and measurement techniques to be used in the equipment authorization process.[114] API also suggests the Commission defer any decision on this matter in this proceeding and seek further comments on this issue.[115] Because of the diverse nature of the technologies and products manufactured for PLMR bands in questions, we believe that this issue is not yet ripe and that further debate and gathering of information is warranted. We therefore decline to adopt rules implementing the ACCP concept at this time, but we encourage the industry to continue to examine this issue and to develop a consensus, and we will revisit the issue if an industry consensus develops and is presented to the Commission, or the matter otherwise becomes ripe for decision.

35. **§ 90.242 Travelers' information stations.** Section 90.242(a)(3) provides that Travelers' Information Stations are authorized on a secondary basis to stations authorized on a primary basis in the 510-535 and 1605-1715 kHz bands (AM radio stations). In 1991, the Commission authorized Travelers' Information Stations to be licensed over the entire AM band, and the Commission stated that the stations would remain a secondary service.[116] Section 2.106 of the Commission's Rules currently reflects that the Travelers' Information Stations are a secondary service. However, while Section 90.242(a) shows that Travelers' Information Stations may be authorized over the entire AM band, Section 90.242(a)(3) was never updated to provide for authorization over the entire AM band. Accordingly, we now amend Section 90.242(a)(3) to provide that Travelers' Information Stations are secondary to stations authorized on a primary basis in the bands 510-1715 kHz.

36. **General update of Part 90 Rules.** In the *Notice*, we proposed certain changes of a "housekeeping" nature to correct outdated information still contained in the Rules and to eliminate redundant rules. Specifically, we proposed to amend Section 90.1 to replace the radio service names with the appropriate "pool" names. Also, we proposed to delete the listed telephone number in Section 90.177(d)(2) and to delete Section 90.449 of the Commission's rules because it unnecessarily duplicates Section 1.89 of the Commission's rules. No opposing comments were received. Thus, for the reasons stated in the *Notice* and herein, we are adopting our proposals to amend these sections of the Rules.

B. Suggested Additional Rule Changes

37. In the Notice we asked for comments on any other rule changes that could be made to update, streamline, or clarify Part 90 of the Commission's Rules. What follows is our discussion of additional rule changes suggested by certain commenters.

38. **§§ 90.617, 619 Frequencies available.** Section 90.617 of the Commission's Rules designates frequencies in the 800 MHz and 900 MHz bands for licensing and use by particular types of private land mobile radio licensees.[117] The five categories are as follows: (1) Public Safety, (2)

[114] Motorola Reply Comments at 9.

[115] API Reply Comments at 6.

[116] Review of the Technical Assignment Criteria for The AM Broadcast Service, *Report and Order*, MM Docket No. 87-267, 6 FCC Rcd 6273, 6335-36 (1991).

[117] 47 C.F.R. § 90.617.

Industrial and Land Transportation (I/LT), (3) Business (B), (4) SMR, and (5) General.[118] The Ad Hoc 800/900 MHz Licensee Committee (Ad Hoc Committee) suggests that the Commission should allow "incumbent"[119] licensees of I/LT and Business channels to reclassify their channels as SMR or to assign them voluntarily to SMR operators for SMR usage. To achieve this result, Ad Hoc Committee states that the Commission should either amend Sections 90.617 and 90.619 or act expeditiously and favorably on a pending waiver request filed by Nextel, Inc. (*Nextel Waiver Request*).[120] Ad Hoc Committee asserts that the result it seeks would advance the current communications needs of existing, incumbent I/LT and Business licensees.[121]

39. Ad Hoc Committee states that it participated by comments and reply comments in the Nextel Waiver request proceeding.[122] Ad Hoc Committee also states in the *Nextel Waiver Request* proceeding, certain commenters argued that the relief sought by Nextel and the Ad Hoc Committee could appropriately be granted by the Commission only via a rulemaking proceeding. Ad Hoc Committee disagreed.[123] We agree with Ad Hoc Committee that the Commission has discretion to proceed by means of rulemaking, waiver, declaratory ruling, or even adjudication in making policy, so long as all interested parties are afforded notice and an opportunity to present their position.[124] On July 21, 1999, the Wireless Telecommunications Bureau (Bureau) issued an *Order* granting in part and denying in part Nextel's requests for waiver.[125] The Bureau also stated that it would incorporate the comments compiled in the *Nextel Waiver Request* proceeding on the issue of using PLMR system channels in a Commercial Mobile Radio Service system into the docket in which we are examining licensing issues in light of the 1997 Balanced Budget Act.[126] Because we will address the questions raised by the Ad Hoc Committee in the *Balanced Budget Act* proceeding, we will not consider those questions here.

40. **§ 90.725 Construction requirements for Phase I 220 MHz licensees.** Global Cellular Communications, Inc. (Global) submitted comments on the requirement that a nationwide Phase I 220 MHz licensee file an application with the Commission and receive approval before adding additional

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[118] *See id.* There are only three categories in the 900 MHz band, Industrial and Land transportation, Business, and SMR. *Id.* Section 90.619 of the Commission's Rules, 47 C.F.R. §90.619, specifies the 800/900 MHz frequencies for these categories in border areas.

[119] The incumbent would be defined as a license applied for or issued prior to October 28, 1998 (which is the date the FCC released the *Nextel Waiver Request Notice*, *see* n., *infra*).

[120] *See* Ad Hoc Comments at 1-2, *citing* Request for Waiver by Nextel Corporation, *Public Notice*, DA 98-2206 (rel. October 28, 1998).

[121] *Id.* at 6.

[122] *Id.* at 1.

[123] *Id.* at 2.

[124] *Id.*

[125] Nextel Communications, Inc. Requests for Waiver of 47 C.F.R. §§ 90.167(c) and 90.619(b), *Order*, DA 98-2206 (rel. July 21, 1999).

[126] *See* Wireless Telecommunications Bureau Seeks Comment on Licensing of PMRS Channels in the 800 MHz Band for Use in Commercial SMR Systems, *Public Notice*, WT Docket No. 99-87, DA 99-1431 (rel. July 21, 1999), *citing* Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206 (1999).

sites to its nationwide system.[127] No reply comments regarding this issue were filed. After Global submitted its comments, we addressed this issue in another proceeding,[128] which had been initiated by a petition for declaratory ruling filed by ComTech, Inc., another Phase I nationwide 220 MHz licensee.[129] In that proceeding, we concluded, as a general matter and with certain restrictions, that we would forbear from requiring Phase I nationwide 220 MHz licensees to obtain separate authorizations for individual base stations.[130] As we have resolved this issue, we will not further consider Global's comments in this proceeding.

41. **§ 90.203 Type acceptance required.** Finally, we received a request from Ericsson to change the spectrum efficiency standards for data equipment set forth in Section 90.203(j) of the Commission's Rules[131] from 4800 bps per 6.25 kHz to 4800 bps per 12.5 kHz.[132] Ericsson claims that in the *Refarming* proceeding the Commission apparently "inadvertently" applied the 6.25 kHz standard to data equipment and asks that the standards for data transmissions (essentially one data channel per 6.25 kHz) be made consistent with those for voice transmissions (one voice channel per 12.5 kHz). We note that Ericsson raised this argument in the *Refarming* proceeding in a Petition for Issuance of Erratum or Petition for Reconsideration.[133] In a *Second Memorandum Opinion and Order* (released April 13, 1999), we rejected Ericsson's request stating both that the request was untimely and that Section 90.203(j) accurately reflects the Commission's decision in the *Refarming Second Report and Order*.[134] Ericsson's request was properly considered and rejected in the *Refarming* proceeding. We therefore decline to consider Ericsson's comments in this proceeding.

42. **Correction of Part 90 Rules relating to the Private Land Mobile Radio Services.** On April 13, 1999, the Commission released the *Second Memorandum Opinion and Order* in the *Refarming Proceeding*.[135] There were several errors in the rule amendments concerning the Public Safety Pool Frequency Table and other sections of the Part 90 Rules contained in the released version of the text. We are now correcting those errors by replacing the rule amendments to Sections 90.20(c) and (d), 90.22,

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[127] Global Comments at 2.

[128] ComTech Petition for Declaratory Ruling that Licensees of Nationwide 220 MHz Mobile Communications Systems Are Not Required to License Separately Each of the Systems' Base Stations, *Memorandum Opinion and Order*, FCC 99-196 (rel. Aug. 3, 1999) (*ComTech MO&O*).

[129] *See* Public Comment Invited, Commission Seeks Comment on ComTech Petition for Declaratory Ruling that Licensees of Nationwide 220 MHz Mobile Communications Systems Are Not Required to License Separately Each of the Systems' Base Stations, *Public Notice*, 11 FCC Rcd. 1908 (1996).

[130] *ComTech MO&O*, FCC 99-196, ¶¶ 4-9.

[131] 47 C.F.R. § 90.203(j).

[132] Ericsson Comments at 4.

[133] *See Refarming Proceeding, Second Memorandum Opinion and Order*, 14 FCC Rcd at 8667 ¶ 52.

[134] *Id.* at 8667 ¶ 53.

[135] *Refarming Proceeding, Second Memorandum Opinion and Order*, FCC 99-68 (released Apr. 13, 1999). The changes to the introductory text and paragraph (b) of 47 C.F.R. § 1.175 are to correct errors in the *Refarming Proceeding, Second Memorandum Opinion and Order*; the change to 47 C.F.R. § 1.175(i) is to effect our decision to require frequency coordination for the 220 MHz public safety frequencies; *see* paras. 13-16, *supra*. *See* Appendix B, *infra*.

and 90.175 of the Commission's Rules released on April 13, 1999, with the amendments to those rules set forth in Appendix B. Similarly, we are removing the amendments to Section 90.135 of the Commission's Rules released on April 13, 1999. A correction will also be published in the Federal Register to correct the Federal Register summary of the *Second Memorandum Opinion and Order*.[136]

IV. FURTHER NOTICE OF PROPOSED RULE MAKING

43. **§ 90.20 Public Safety Pool: School and Park Districts.** Section 90.20(a)(i) of the Commission's Rules provides that, as a general matter, government entities are eligible to hold authorizations in the Public Safety Pool to operate radio stations for the transmission of communications essential to their official activities.[137] While eligible government entities include "[a] district and an authority," they specifically do not include a school district or authority or a park district or authority.[138] We propose to delete this exclusion and to make conforming changes to Section 90.242 of the Rules. Because school districts will be eligible to hold authorizations in the Public Safety Pool with this change, we also propose to eliminate their eligibility to hold authorizations in the Industrial/Business Pool.[139] We seek comment on these proposals.

44. In 1960, the Commission restricted school and park districts and authorities from holding licenses as government entities in order to relieve a shortage of available frequencies in the Local Government Radio Service.[140] The Commission stated that it would reconsider the restriction if the frequency situation improved.[141] We believe that with the recent reallocation of 24 megahertz of spectrum to the public safety services,[142] the consolidation of the public safety radio services into one Public Safety Pool, and the technical advances that have occurred since 1960, there are now sufficient frequencies available in the Public Safety Pool to accommodate school and park districts. We also believe that our proposed change will eliminate an unnecessary restriction and simplify eligibility requirements for the Public Safety Pool, which will benefit both prospective public safety licensees and the Commission. Finally, we believe that eliminating the restriction will facilitate interoperable communications between school or park district personnel and other public safety entities, especially during disasters and emergencies.

45. Pending the completion of this rule making proceeding, we will routinely waive the provision of Section 90.20(a)(1)(i) of the Rules excluding park districts and authorities from eligibility for authorizations in the Public Safety Pool. Prior to the consolidation of the Public Safety Radio

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[136] *Refarming Proceeding, Second Memorandum Opinion and Order*, 64 Fed. Reg. 36,258 (July 6, 1999).

[137] 47 C.F.R. § 90.20(a)(1).

[138] 47 C.F.R. § 90.20(a)(1)(i). Park districts and authorities are, however, eligible to operate travelers' information stations. 47 C.F.R. § 90.242(a)(1).

[139] 47 C.F.R. § 90.35(a)(2).

[140] *See* Clarification of Eligibility in the Local Government Radio Service, FCC 60-1139, 25 Fed. Reg. 9179 (1960), *also set forth at* 47 C.F.R. § 89.251 Note (1961).

[141] *Id. See also* Eligibility Criteria in Local Government Radio Service, Dkt. No. 15402, *Report and Order*, FCC 64-688, 29 Fed. Reg. 10,514, 10,514 (1964).

[142] *See* Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22,953 (1998).

Services into the Public Safety Pool, park districts and authorities were eligible to hold authorizations in the Forestry-Conservation Radio Service.[143] However, eligibility for licenses in the current Public Safety Pool for entities charged with forestry-conservation activities is limited to non-government entities.[144] Therefore, park districts and authorities are not eligible to hold licenses in the Public Safety Pool. And, unlike school districts and authorities, park districts and authorities are not eligible to hold licenses in the Industrial/Business Pool.[145] Therefore, in order to allow park districts and authorities to apply for authorizations to operate radio stations, we must waive the provision of Section 90.20(a)(1)(i) of the Rules excluding park districts and authorities from eligibility.

46. We may grant a waiver of a rule when in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[146] We find that such unusual circumstances exist here. In this connection, we note that absent the waiver, park districts and authorities have no reasonable alternative to acquire radio licenses and that preventing them from acquiring radio licenses would be contrary to the public interest. We therefore conclude that pending the resolution of this rule making proceeding, we should waive the restrictions contained in Section 90.20(a)(1)(i) in order to allow park districts and authorities to hold licenses in the Public Safety Pool.

47. **§ 90.20 Public Safety Pool: Highway maintenance frequencies.** The American Association of State Highway and Transportation Officials (AASHTO) has asked that we clarify the applicability of Section 90.20(43)'s restriction that certain Public Safety Pool frequencies are reserved for use in highway maintenance systems operated by licensees other than States.[147] AASHTO notes that the Commission's current interpretation of the rule limits assignment of the frequencies to (non-State) highway maintenance systems[148] and seeks a revised interpretation that would permit any public safety user, other than a state highway maintenance system, to use these frequencies.[149]

48. One of the primary reasons we consolidated the various Public Safety services into a Public Safety Pool was to provide for more efficient use of the spectrum, *i.e.*, to increase spectrum sharing.[150] We therefore agree with AASHTO and take this opportunity to clarify that public safety users other than

[143] *See* 47 C.F.R. § 90.25(a) (1997).

[144] 47 C.F.R. § 90.20(a)(2)(ii).

[145] School districts and authorities are eligible for authorizations in the Industrial/Business Radio Pool as entities operating educational institutions. 47 C.F.R. § 90.35(a)(2).

[146] 47 C.F.R. §1.925(b)(3).

[147] *See* Letter from Larry A. Miller, Frequency Coordination Manager, AASHTO to D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC, dated September 15, 1999 (AASHTO Letter). The frequencies at issue, which total thirty, are set forth in the table at 47 C.F.R. § 90.20(c) with a note that they are subject to limitation 43.

[148] AASHTO notes that the restriction, as currently interpreted by the Commission, eliminates these frequencies from interservice coordination with other public safety users and discourages uniform spectrum allocation. *See* AASHTO Letter at 1.

[149] *Id.*

[150] *Refarming Proceeding, Second Report and Order*, 12 FCC Rcd at 14,309-10.

state highway maintenance systems are permitted to use these thirty frequencies. We also believe, however, that if we allow all other public safety users to use these frequencies, then we should also permit state highway maintenance systems to use them. We therefore propose to eliminate the current restriction in its entirety. We seek comment on this proposal.

49. **§ 90.35 Industrial/Business Pool.** The American Automobile Association (AAA) generally agrees with our proposal, which we adopt today, to expand the use of the thirty shore-to-vessel/dockside frequencies listed in Section 90.35(c).[151] It proposes, however, that we eliminate the power restriction for eight of the frequencies and make AAA the sole coordinator for those frequencies.[152] AAA states that the channels potentially can be paired with Emergency Road Service channels enabling Emergency Road Service licensees to significantly expand the coverage of their signals.[153] AAA contends that this will provide substantial benefit for the public.[154] AAA notes that in many parts of the country many auto clubs are at full capacity using the Emergency Road Service channels.[155] AAA states that its proposal would allow those channels to be used far more efficiently than they are used today.[156] AAA contends that no party will be prejudiced by the assignment of eight of the dockside frequencies for Emergency Road Service as twenty-two dockside channels will remain for general low-power use.[157]

50. AAA envisions that when the designated eight dockside frequencies are paired with the Emergency Road Service frequencies, the dockside frequencies would be used for mobile units and the Emergency Road Service frequencies would become the repeater frequencies.[158] AAA states that to achieve this result, it is necessary to eliminate the current power restriction on the dockside frequencies.[159] AAA states that the current 2-watt restriction may be necessary when the frequencies are used dockside but claims that it serves no useful purpose outside that setting.[160] AAA also states that designating it the sole coordinator for these frequencies, as it proposes, will ensure that removing the power restriction will result in no harm to the incumbent users on the dockside channels.[161] AAA also states that designating it the coordinator for these channels will prevent interference on the

[151] AAA Supplemental Comments. On August 26, 1999, AAA filed a motion for leave to file supplemental comments to make its proposal. In the motion, AAA stated no party would be prejudiced if we accepted its comments and that it had served a copy of the Supplemental Comments on all parties to the proceeding. We hereby grant the motion and accept the Supplemental Comments.

[152] AAA Supplemental Comments at 2. The eight frequencies AAA proposes to use are: 457.525 MHz. 457.5375 MHz, 457.550 MHz, 457.5625, 457.575 MHz, 457.5875 MHz, 457.600 MHz, 457.6125 MHz.

[153] *Id.* at 2-3.

[154] *Id.*

[155] *Id.*

[156] *Id.* at 3-4.

[157] *Id.* at 6-7.

[158] *Id.* at 5.

[159] *Id.* at 2-3.

[160] *Id.* at 4.

[161] *Id.* at 4, 5.

corresponding Emergency Road Service channels.[162] Otherwise, states AAA, the existing users of the Emergency Road Service might be subject to substantial interference from the dockside channels when they are used as repeater frequencies, which are often not adequately monitored for co-channel traffic.[163] AAA states the result of the interference would mean delays to AAA dispatching and providing assistance to stranded motorists.[164] We seek comment on AAA's proposal.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

51. A Final Regulatory Flexibility Analysis with respect to the *Report and Order* and an Initial Regulatory Flexibility Analysis with respect to the *Further Notice of Proposed Rule Making* have been prepared and are included in Appendix D.

B. Paperwork Reduction Act

52. This *Report and Order* contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due 60 days from date of publication of this *Report and Order* in the Federal Register. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov. Furthermore, a copy of any such comments should be submitted to Virginia Huth, OMB Desk Officer, 725 17th Street, N.W., Room 10236 NEOB, Washington, D.C. 20503 or via the Internet to VHuth@omb.eop.gov.

C. Alternative Formats

53. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0260, TTY (202) 418-2555, or at mcontee@fcc.gov. This *Report and Order* can also be downloaded at http://www.fcc.gov/dtf/.

D. Pleading Dates

54. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on before [60 days after publication in the Federal Register], and reply comments on or before [90 days after publication in the Federal Register]. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

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[162] *Id.* at 5-6.

[163] *Id.* at 6.

[164] *Id.*

55. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

56. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

E. Ordering Clauses

57. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332(a)(2), Parts 2, 90 and 95 of the Commission's Rules, 47 C.F.R. Parts 2, 90 and 95, ARE AMENDED as set forth in the attached Appendix B.

58. IT IS FURTHER ORDERED that the rule changes adopted herein will become effective [thirty days after publication in the Federal Register].

59. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 98-182, including both the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

F. Contact for Information

60. For further information, contact Ghassan Khalek (202) 418-2771, or Guy Benson (202) 418-2946, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary